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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/541,592

07/07/2005

Andrea Zanella

4017-32

1975

23117

7590

03/27/2008

NIXON & VANDERHYE, PC

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EXAMINER

GETZOW, SCOTT M

ART UNIT

PAPER NUMBER

3762

MAIL DATE

DELIVERY MODE

03/27/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/541,592	Applicant(s) ZANELLA, ANDREA	
	Examiner /Scott M. Getzow/	Art Unit 3762	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 73-144 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 73-95, 97-119 and 121-143 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____. |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>7/7/05</u> . | 6) <input type="checkbox"/> Other: ____. |

Claim Rejections - 35 USC § 102

1. Claims 73-81,84-95 are rejected under 35 U.S.C. 102(b) as being anticipated by Tannenbaum (4,977,895).

Figures 3a-3c of Tannenbaum show the ability to change a parameter of the pulse stream in a variety of ways. Col. 2:60+ teach that pulse width and frequency are adjustable. Col. 5 teaches that various frequency modulation ranges can be used. The device of Tannenbaum is considered to be able to perform the various intended parameter variations set forth in the claims. Such terms in the claims as 'gradual' or 'sudden' are considered to be relative in nature, and thus are broad enough to be covered by the teachings of Tannenbaum.

2. Claims 73-95 are rejected under 35 U.S.C. 102(b) as being anticipated by Herbst (6,029,090).

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Herbst is considered to encompass all of the subject matter of the above claims. As taught in the abstract, amplitude, frequency, pulse width , etc. can all be varied depending on the particular objective to be achieved. Further, various sensors can be used to detect various substances, some of which are indicative of muscle spasm or growth factors (col. 9:45+), and provide feedback to change the stimulation as necessary. Similar to the Tannenbaum patent, the Herbst device is considered to be able to perform all of the intended parameter variations set forth in applicant's claims.

Claim Rejections - 35 USC § 103

3. Claims 97-105,108-119,121-129,132-143 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tannenbaum (4,977,895).

The method steps of the above claims are considered to follow obviously from the normal workings of the

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Tannenbaum device. That is, one of ordinary skill in the art would understand that various parameters can be adjusted to suit a variety of patient problems, and that some experimentation as to the proper frequencies, pulse width, timing, amplitude, etc. to use can be expected. Further, re claim 121, to use a support that is readable by a computer is considered to be well known in the art for the ease with which various programs can be changed and stored to fit the particular circumstances.

4. Claims 97-119,121-143 are rejected under 35 U.S.C. 103(a) as being unpatentable over Herbst (6,029,090). Herbst is considered to render the claims obvious for reasons similar to those set forth above.

Allowable Subject Matter

5. Claims 96,120,144 are objected to as being dependent upon a rejected base claim, but would be

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allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to /Scott M. Getzow/ whose telephone number is (571) 272-4946. The examiner can normally be reached on M-F, 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Angela Sykes can be reached on (571) 272-4955. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Scott M. Getzow/
Primary Examiner
Art Unit 3762

SMG